

174966



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

July 27, 2005

VIA EMAIL & HAND DELIVERY

Mr. Charles Terreni, Chief Clerk
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Bonnie D. Shealy
1901 MAIN STREET, SUITE 1200
POST OFFICE BOX 944
COLUMBIA, SOUTH CAROLINA 29202

PH
(803) 779-8900 | (803) 227-1102 *direct*
FAX
(803) 252-0724 | (803) 744-1551 *direct*

bshealy@robinsonlaw.com

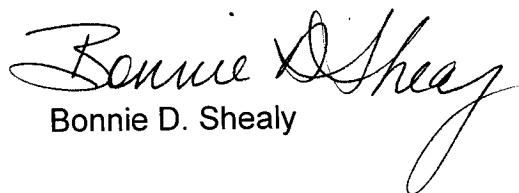
**Re: Matrix Telecom, Inc
Docket No. 2005-98-C
Our File No. 30062-0001**

Dear Mr. Terreni:

Enclosed for filing on behalf of Matrix Telecom, Inc. please find a Motion for Expedited Review of the Application of Matrix Telecom, Inc. and to Supplement the Application with requests for waivers of certain regulatory requirements normally granted to competitive local exchange carriers. The South Carolina Telephone Coalition does not oppose the application or the motion for expedited review and the Office of Regulatory Staff has consented to the motion. By copy of this letter, I am serving the same on all parties of record. Please stamp the extra copies provided as proof of filing and return them with our courier.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.


Bonnie D. Shealy

/bds
enclosure
cc/enc:

David Butler, Hearing Examiner (via email & U.S. Mail)
Florence Belser, General Counsel ORS (via email & U.S. Mail)
Margaret Fox, Esquire (via email & U.S. Mail)
Greg Taylor, Vice President & General Counsel (via email & U.S. Mail)
Mr. Dan Arnett, Chief of Staff ORS (via email & U.S. Mail)

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

Docket No. 2005-98-C

In Re:

Application of Matrix Telecom, Inc.)
For a Certificate of Public Convenience)
and Necessity to provide Local Exchange)
Telecommunications Services in the)
State of South Carolina)
_____)

2005 JUN 27 11 09 15
S.C. PUBLIC SERVICE COMMISSION

**MOTION FOR EXPEDITED REVIEW OF APPLICATION
AND TO SUPPLEMENT APPLICATION**

Comes now the Applicant Matrix Telecom, Inc. ("Matrix" or "Applicant") who hereby moves pursuant to S.C. Code Reg. 103-820, 103-840 and other applicable rules of practice and procedure of the Public Service Commission of South Carolina ("Commission") that the Commission perform an expedited review of Matrix's application for a Certificate of Public Convenience and Necessity to authorize Matrix to provide local exchange telecommunications services throughout the State of South Carolina. Order No. 90-1176 authorized the Applicant to offer intrastate interexchange telecommunications services to customers throughout the State. Matrix requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing.

In addition, Matrix respectfully requests that it be allowed to supplement its application to include requests for waivers of certain regulatory requirements normally granted to competitive local exchange carriers as more fully described in this motion. In support of this motion Matrix would show the following:

FACTUAL BACKGROUND

1. The Applicant published notice of the filing of the application in area newspapers as required by the Commission. The deadline for filing petitions to intervene in the proceeding was May 30, 2005.

2. On or about May 25, 2005, the South Carolina Telephone Coalition intervened in the proceeding. The South Carolina Telephone Coalition and Matrix agreed to a stipulation which is attached and incorporated by reference as Exhibit 1. As a result of the Stipulation, the South Carolina Telephone Coalition does not oppose the application or the motion for expedited review. As a result of discussions with the Office of Regulatory Staff, Matrix will voluntarily post a \$5000 bond in regard to its offering of local exchange services. The Office of Regulatory Staff has indicated that it does not oppose the application and has consented to the motion. No other comments or petitions to intervene have been filed.

3. Matrix is a Texas corporation whose principal place of business is in Oklahoma City, Oklahoma. Matrix was authorized to offer interexchange telecommunications services to customers throughout the State in Docket No. 1990-517-C, Order No. 90-1176, dated December 19, 1990, as modified by Order No. 1994-947. It has been successfully operating as a competitive provider of interexchange services to consumers in South Carolina since 1991.

4. Matrix seeks authority to provide resold local exchange services in all areas of South Carolina subject to the terms of the stipulation with the South Carolina Telephone Coalition. Matrix is currently certificated in the continental United States as a reseller of long distance services and is in the process of filing for local certification on a national basis. Matrix's financial, technical, and managerial qualifications are more fully described in the verified testimony of Dennis Smith which is

incorporated by reference. The Smith testimony was filed with the Commission on or about June 10, 2005.

5. Matrix also requests that it be allowed to supplement its application to include requests for waivers of the following regulatory requirements:

- A. Matrix requests a waiver of the requirement in 26 S.C. Regs. 103-610 that all records required under the rules be kept within the State of South Carolina. Matrix maintains its headquarters in Oklahoma and offers services in multiple jurisdictions. It would be impractical and administratively burdensome for Matrix to maintain separate records in all of the states in which it operates. Accordingly, Matrix seeks a waiver so that it may maintain its records at its principle place of business in Oklahoma City, Oklahoma.
- B. Matrix requests that it be exempt from any record-keeping rules or policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts. Because Matrix uses the Generally Accepted Accounting Principles, the Commission will have a reliable means by which to evaluate operations.
- C. Matrix does not intend to publish telephone directories and requests a waiver of 26 S.C. Regs. 103-631. Matrix will make arrangements to ensure that the names of its customers are included in the directories published by the appropriate incumbent local exchange carrier. Waiver of the directory requirement is justified because it would be an unnecessary burden on the Applicant to require it publish and distribute a separate directory to all customers located within each exchange area.

We respectfully request that the Commission grant these waivers.

ARGUMENT

5. Matrix filed its application pursuant to S.C. Code Ann. § 58-9-280(B) seeking a certificate of Public Convenience and Necessity to provide local exchange telecommunications services. Section 58-9-280(B) provides that "[a]fter notice and an *opportunity to be heard*, the Commission may grant a certificate to operate as a telephone utility...to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC...." S.C. Code Ann. § 58-9-280(B) (Supp. 2004). Notice has been published as required by the Commission and any interested party, including Matrix has thus had an *opportunity* for a hearing. Therefore, the Commission has satisfied the statutory requirements. Matrix submits that the Commission now has the discretion under Section 58-9-280(B) to consider Matrix's application without a full, evidentiary hearing.

6. Matrix seeks expedited review of its application on the grounds that (1) the South Carolina Administrative Procedures Act ("APA") grants the Commission flexibility regarding hearings in contested matters, (2) due process requirements are satisfied if Matrix waives the right to a hearing when there is no disputed material issue of fact, and (3) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection required under the APA.

7. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); Anonymous v. State Board of

Medical Examiners, 473 S.E.2d 870 (S.C. Ct. App. 1996) citing Morrissey v. Brewer, 408 U.S. 471, 481 (1972).

The APA provides that "in a contested case, all parties must be afforded an opportunity for hearing after notice not less than thirty days." S.C. Code Ann. § 1-23-320(a) (Supp. 2004). The APA defines "contested case" as "a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties or privileges of a party are required by law to be determined by an agency after an opportunity for hearing." S.C. Code Ann. § 1-23-310(2) (Supp. 2004).

The provisions of the APA ensure that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2004).

Notice of the company's application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided as required by the APA and S.C. Code Ann. Section 58-9-280(B). The South Carolina Telephone Coalition, has withdrawn its opposition after entering amending the stipulation with Matrix and the Office of Regulatory Staff has consented to the motion.

Matrix is currently certified to provide long distance telecommunication services in South Carolina and has been offering interexchange telecommunications services since it received its certificate. Therefore, the Commission is aware of the technical, managerial and financial background relied upon by Matrix in its application. Matrix respectfully requests that the Commission apply section 1-23-320(f) of the APA and informally dispose of the proceeding without requiring a formal hearing.

8. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296.

Matrix is requesting the hearing be waived and there are no intervenors opposing its certification in the proceeding. Matrix's financial, technical and managerial qualifications are outlined in the testimony of Mr. Smith. The Commission has previously held a hearing concerning Matrix's fitness to provide telecommunications services in the state. Therefore, there is no material issue of fact to be decided at a formal hearing.

9. Notice and the opportunity to present written evidence would satisfy due process requirements for the Matrix application. Case law in other jurisdictions supports the proposition that holding a hearing is not required in all situations. One case noted that the "flexibility of the scope of due process is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure....There are times when no more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." Bartlett v. Krause, 551 A.2d 710, 722 (Ct. Sup. Ct. 1988).

Another case noted that "[d]ue process does not always require an administrative agency to hold an evidentiary hearing before it goes about the business it was created to conduct....Sometimes nothing more is required than notice and the opportunity to present reasons, either orally or in writing, why the proposed action should not be taken." In the Matter of the Request for Solid Waste Utility Customer Lists, 524 A.2d 386, 393 (N.J. Sup. Ct. 1987). In Request for Solid Waste, the

Court held that since "the proceeding did not involve any disputed facts, a full evidentiary hearing would have been unnecessary and burdensome, both fiscally and administratively, to the agency." Id.

Matrix has presented the information required under S.C. Code § 58-9-280(B) in its application and the testimony of Dennis Smith. Since the Office of Regulatory Staff has consented to the motion and the Stipulation with the South Carolina Telephone Coalition settled the only intervention in this docket, Matrix asserts that a full evidentiary hearing on its application is unnecessary.

WHEREFORE, Matrix respectfully requests that the Commission informally dispose of the proceeding without holding a hearing and grant its request for a Certificate of Public Convenience and Necessity to Provide Resold Local Exchange Telecommunications Services and that the Commission waive the regulatory requirements requested in this motion.

Dated this 27th day of July, 2005.

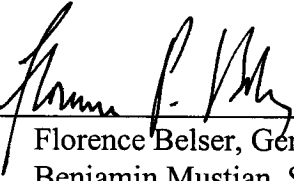
ROBINSON, McFADDEN & MOORE, P.C.

By Bonnie D. Shealy
Bonnie D. Shealy
Post Office Box 944
Columbia, SC 29202
Telephone (803) 779-8900
Facsimile (803) 252-0724

Attorneys Matrix Telecom, Inc.

WE CONSENT:

OFFICE OF REGULATORY STAFF

By:  _____
Florence Belser, General Counsel
Benjamin Mustian, Staff Attorney
Post Office Box 11263
Columbia, South Carolina 29211
Telephone (803) 737-0800

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2005-98-C

Re: Application of Matrix Telecom, Inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
Telecommunications Services in the State)
of South Carolina)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Matrix Telecom, Inc. ("Matrix Telecom") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Matrix Telecom's Application. SCTC and Matrix Telecom stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Matrix Telecom, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Matrix Telecom stipulates and agrees that any Certificate which may be granted will authorize Matrix Telecom to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Matrix Telecom stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Matrix Telecom stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless

and until Matrix Telecom provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Matrix Telecom acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Matrix Telecom stipulates and agrees that, if Matrix Telecom gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Matrix Telecom will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Matrix Telecom acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Matrix Telecom, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Matrix Telecom agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available


telephone service at affordable rates.

9. Matrix Telecom hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 23 day of June,
2005.

Matrix Telecom, Inc.

South Carolina Telephone Coalition:


_____

M. John Bowen, Jr.

Margaret M. Fox

McNAIR LAW FIRM, P.A.

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies
for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2005-98-C

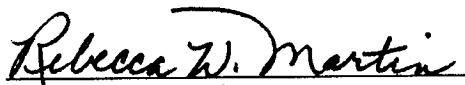
Re: Application of Matrix Telecom, Inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Local Exchange)
Telecommunications Services in the State)
of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, Rebecca W. Martin, an employee of McNair Law Firm, P.A., do hereby certify that I have
this date served one (1) copy of the foregoing Stipulation upon the following party of record by
causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Greg Taylor, Esquire
300 N. Meridian, Suite 200-N
Oklahoma City, Oklahoma 73107

Florence P. Belser, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211.


Rebecca W. Martin
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

June 27, 2005

Columbia, South Carolina

2005 JUN 27 PM 10:20
COMMUNICATIONS
SECTION
SOUTH CAROLINA
PUBLIC SERVICE COMMISSION

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-98-C**

2005 JUL 27 AM 10:20
COMM. STAFF

In Re:)
)
Application of Matrix Telecom, Inc.)
For a Certificate of Public)
Convenience and Necessity to)
Provide Local Exchange)
Telecommunications Services in)
the State of South Carolina)

CERTIFICATE OF SERVICE

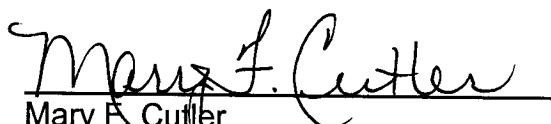
This is to certify that I, Mary F. Cutler, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the persons named below the **Motion for Expedited Review of the Application** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

Florence P. Belser, General Counsel
Office of Regulatory Staff
Post Office Box 11263
Columbia, SC 29211

Dan F. Arnett, Chief of Staff
Office of Regulatory Staff
1441 Main Street, 3rd Floor
Columbia, SC 29201

Dated at Columbia, South Carolina this 27th day of July 2005.



Mary F. Cutler